

STEERING COMMITTEE MEETING
September 19, 2005
Gulf of Maine Research Institute Board Room

Welcome and Introductions

Panel Members:

Tollef Olson, mussel aquaculturist; Karen Stimpson, MITA; Lyman Kennedy, lobsterman; Jeff Chase, USCG; John Mauro, USCG; Jay Clement, USACOE; Tom Myers, South Portland & Joe Payne, Friends of Casco Bay

Steering Committee Members:

Jim Salisbury, Kathleen Billings, Barbara Vickery, Paul Anderson, Evan Richert, & Heather Deese-Riordan (Via conference call: Dave Schmanska)

Staff:

Kathleen Leyden, David Etnier, Deirdre Gilbert, Vanessa Levesque, Mary Costigan & John Sowles

Public:

Jeff Armstrong (DMR) & Tom Franklin (MITA)

Bay Management Scenario

Paul introduced the purpose of the scenario and panel. The goal of the panel was to provide the steering committee an opportunity to ask questions of a particular place and set of issues related to multiple users on water, rather than being abstract in their discussions. The panelists explained their role in Casco Bay:

Joe Payne: Friends of Casco Bay has mission to protect Casco Bay (juvenile lobster studies, surface to bottom water quality studies).

Tom Myers: Director of S. Portland transportation and waterfront, as well as waterfront coalition in Portland.

Jay Clement: The Corps of Engineers has responsibility for maintaining navigation. Regulatory role – require permits for navigable waters (can include aquaculture, boat ramps, dredging, filling, etc.) Advisory role to municipalities and public interest groups to help maintain navigation. Annual outreach to harbormasters and review harbor ordinances with municipalities.

John Mauro – The USCG office in Boston overseas aids to navigation. My goal is to reduce ship collisions and improve safety of waterways. I also have an advisory role to harbormasters. The role of my office is going to expand to include all waterway routing issues.

Jeff Chase – The Coast Guard studies waterways every 5 years. I am conducting a Casco Bay waterways management study for 2006.

Karen Stimpson – The MITA manages coastal access at island sites. Less than half the sites are public. We provide access to private ones and provide services in return – including volunteer stewardship and managing access, which requires public education, and the highest standards of Leave No Trace. We spent 5 years with stakeholders looking carefully at increased use of public islands and potential increased conflicts on the islands, and we identified conflicts, impacts and

solutions. We have the “Public Island Management Plan” as a blueprint for 10 years in future, signed by the State of Maine. The implementation has been going smoothly since those involved in management helped create the plan. We also have a steward at Jewell Island.

Lyman Kennedy – Casco Bay keeps me alive (fishes out of Portland). I’ve lived off it, and represented 100+ other fishermen. Anything that happens there will impact my living.

Tollef Olsen– I raise shellfish for a living (mussels rafts). Water quality is everything. It’s not a new fishery, it’s just using new equipment. It’s necessary to make the public aware of what we’re doing to reduce adverse reactions and to educate them about how their actions affect the water. At my first set of hearings for 3 year hearings had a lot of controversy but recent 10 year renewal had few comments and those were positive.

Questions from Steering Committee

The panel responded to questions about the many layers of activity in the marine environment, and whether something else is needed to coordinate management. Some suggestions included:

- The people involved in managing do not need more coordination, because everyone understands their own jobs, and how that job relates to other activities. However, for people who are observing, it may seem confusing, and as though many people are doing the same things.
- Most of the things currently in place are reactive. The missing piece is doing the work to determine what our bays will look like in 20, 50 or 100 years.
- Stakeholder groups and users are often surprised at how many organizations/agencies they need to talk to in order to do something.

Is there a need for more holistic planning? Who should be doing it?

- Perhaps a comprehensive plan process, with state assistance built in. It has to start at the town level, and currently there is no expertise at that level for marine zoning.
- Less government is better government. Current agencies are not going to be willing to give up any of their power or responsibilities. No need for more bureaucracy.
- Instead of creating something new, help current agencies do their job. The current system and regulations are good, and are working.
- Do a better job of streamlining processes, and of educating the public and interest groups.
- A range of conflict resolution techniques exist - good neighbor techniques (consider each others’ views and reach consensus) and litigation. Both work. People tend to go to an agency that they think will work out a conflict in their interests.

Are conflicts being resolved well?

- Aquaculture hearings allows people to have their say. And the new pre-hearing scoping session is also a good way to get discussion. Conflict resolution is in place for aquaculture – in the long run people are happy.
- Checks and balances are in place and allow everyone to have their say. This is preferable to a planning process.
- We are much better working within the framework that it has taken us 20 years to develop.

- We need to be more concerned about what's going on the land and how it impacts water quality. Sprawl, development to the water, green lawns, development of bogs/wetlands - it's all causing pollutants, sewage, pesticides to go directly into the bay. This bay is going to turn into Chesapeake Bay with dead zones.
- The agreement between fishermen and pilots reached in Penobscot Bay provides a good example of a conflict resolution process. Brought all stakeholders together, aimed for no regulation. Put together a plan and asked stakeholders for their view. Ended up with a recommended route on the bay that's only about ¼ mile wide, with a handshake between fishermen and pilots. Keep gear out of that area, and pilots will stay there.
- There is a difference between the fishing industry and the recreation industry. Recreation is relatively unregulated at this point. Given increasing pressure, a vision for the bay that preempts interest groups negotiating among themselves for their own interest might be a good thing for the bay for the future. Conflict resolution 50 years from now if we're all operating from the same vision will be much less needed. People are willing to do more cooperation if regulation is threatened.
- If many interest groups come together to reach consensus, it's hard for any one group to come in and prevail over agreement. If there is a regulatory agency that would step in if this doesn't work, that helps.

Cumulative impacts, across many towns and many uses?

- We have the federal government and state government – we already have agencies overseeing regions. We need to protect the bay by looking at the watershed. Our big problem is keeping the water clean.
- There are two fundamental attitudes here. The water users compete amongst themselves and work it out. Then there is a sector of people that don't want any use at all – they have different fundamental views of Maine's coast than the people who work on it (newcomers who don't want the use – but have a vote). That's a divide.
- Portland just went through a process of deciding whether or not to keep it a working waterfront or a residential waterfront. Look at the process used and if it was an effective way of resolving conflict.
- The regulations we have now are a result of 30 years of voting – why would a committee necessarily do better?

Ownership and use of the intertidal zone:

- In the Moody Beach case, the court found that the intertidal zone is owned by the upland owner except for fishing, fowling and navigation.
- ACOE regulations ignore riparian disputes – those are specifically deferred to state and local law.
- Private property is protected under 5th and 14th amendments to the Constitution. The public cannot regulate themselves into the privilege of public access without paying for it.
- Because of the Moody beach decision, MITA tries to educate people that the assumption that you have a right to the intertidal zone is an incorrect assumption. MITA's goal is to talk to everyone who accesses an island from a boat.

Visioning:

- Agencies have to make decisions reflective of the regulations. If they can do that, and consider the interest of an organization or a group of organizations that have come together and make decisions that are reflective of the public interest, then the agency is better off. But first and foremost, decisions must be reflective of the regulations and won't always dovetail with organizations wishes. Decisions would be better informed, however.
- Visioning could be used as an educational tool, to teach kids in school better property management, rules and regulations etc., it would have a better effect than overregulating. As an educational effort (similar to the Casco Bay Watershed Group) for the entire state – it could help to raise a generation of better stewards. The big problem is the overall usage – not small conflicts between groups.
- The usefulness of visioning depends on who comes to the table. Often watermen's views are not integrated – either because they don't think their opinion will matter, or they don't have the time to participate, or the forum that they are being asked to participate doesn't actually have the jurisdiction to solve the problem.

State agencies do a good job of talking to each other?

- No, everyone is fighting over their own piece of turf. It is the same with municipalities. With regard to town politics, there are concerns about what might happen if a small group of wealthy landowners gets involved and start running things. At the Legislature, eventually everything is homogenized.
- Our experience has been that the state agencies do not work well together. For example, DOC was very concerned about island impact, but Dept. of Tourism was promoting kayaking on the islands. One hand does not know what the other is doing.
- Agencies are inhibited by their regulations – they must live by them. One person's personal view may be different, but their regulations may not agree with that.
- Every agency has the regulatory hammer available to them. There is also the pecking order theory – there are those agencies that either are, or perceive themselves to be, more important than another. There is a sense that if you can get it by so-and-so, then all of the other agencies will be comfortable, and it is going to happen. Other than state agencies, other people who are not represented on the panel include oil, and other commercial entities. They are harder to herd than fishermen.
- State agencies may be impeded from using advice and information that they get from other agencies, because their rules say they have to decide on a particular basis.
- Sometimes people can work things out with state agencies, but when proposals go to the Legislature, politics can derail the whole process.

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How to increase the level of “community” input/control:

- Existing groups have access and impact because they are notified of issues, and have opportunities to speak at public hearings, etc. However, having a single vision that is shared by towns around a bay would be helpful. It may not have been done because it is a huge task, and overwhelming.

- The Estuary Partnership has not focused on this issue to date. However, the current Phase II regulations for stormwater have caused some municipalities in this area to work together. Regulation caused that, but maybe there is something else that can bring the municipalities together.
- The question depends on geography and scale. Try to match the right scale of information input and stakeholder input and the scale of decision. Is there a way to govern in a way where it doesn't have to be one-size-fits-all? How do we make sure solutions people come to in their geography aren't impeded by a broader perspective? At the same time, how do we deal with issues where the public interest transcends the local interest?

The biggest issues related to access, use of space and use of water in Casco Bay that will come up in the next 2-5 years? How would you suggest we solve that issue?

- Parking is a problem. Parking in front of million dollar homes and getting people upset. One way to solve it – create offsite parking lot. The town would need to be involved. Falmouth harbor has problems – no commercial fishermen on that board.
- Moorings. There are about 16 million recreational boaters in the USCG Northeast region. Rockland came to a head at one point with mooring issues. Harbor management plans bring all the stakeholders together to talk about what they want to do with that part of the bay. The answer may not always be a special anchorage, but it often helps. A request for a special anchorage can trigger having a public hearing, but we don't always have one.
- Access to our islands will increase and could destroy the wilderness of the islands. Solution – educating people we know who are going to islands is helpful but something we'll have to do forever. And you can have 100 of the most careful users and still impact the island. That might mean setting voluntary guidelines. If that doesn't work, it might require enforcement.
- The uncontrolled placement of moorings (commercial and recreational) is a problem. Many are placed without town control. Many towns don't fully regulate their waters. Solution – continue to educate planning boards, harbor managers about the dangers of not regulating their harbors/waters.
- Overwhelming public interest of having access in some way vs. individual landowners/groups not wanting you to have access to the water. The second issue is related to other demands on the waterfront. Take a look at the model of self-interest that the state uses in the transportation world. PACTs (Portland Area Comprehensive Transportation) model – Money is available (state funding) divided out into each of the communities for maintenance of roads, culverts, bus, trains, ferries, etc. So there is a model in place that is self-determinate (PACT determines how funding will be given out).

Steering Committee Discussion

Regional Shellfish Management example:

- The perceived economics were a factor in the failure – one town had a big area of productive flats and the other town had a small area, yet they had a cooperative agreement to use each others' flats.
- It was economics, acreage of flats, historic feuding of town boundaries, personality conflicts.

- The St. George regional shellfish management success was a matter of having the right people and the same people working together and deciding that it was an all or nothing proposition. The people involved got others to buy into it. They have a council made up of selectmen and diggers that manage the local ordinance rules.
- It's limited entry. If you have an approved conservation plan (one town or multiple towns), you can limit out-of-town diggers from entering your community. You have to give 10% of licenses to out of towners. As part of having this conservation plan, the community must participate in conservation and in enforcement. You couldn't have one warden working in Casco Bay, so the efficiency we see in St. George might not work in Casco Bay.
- The geography and size matters.
- If the community can't come to agreement and create a conservation plan, there will be no ordinance and that is the worst case scenario.

Summarizing the Panel:

There are 4 or 5 major areas that came out of the panel. There are 4 categories of conflict – 1) conflict of human impacts on public resources and that's what many agencies are set up to regulate and this panel said that's working fairly well; 2) the area of private conflicts (boater vs. boater, etc) and Lyman and Tollef said that's best worked out informally or through structures already in place; 3) the conflict that arises as result of land based impacts on water and we heard today that that's the big gap. Water people don't have a say in what happens on land; 4) impacts of marine based activities on coastal property owners. Whether there is a need for intervention and what our role would be remains to be seen.

Also, is the steering committee's task to promote good things happening (vision) or preventing bad things from happening?

Another thing is better state coordination – there are ways to improve communication, streamline work. Look for opportunities to improve coordination.

Lastly, the regional scale of bays vs. town by town control of bays is something we need to examine. That might deal with water quality, public access, moorings - anything where a decision may affect a larger part of the bay. There are a bunch of things where the regional scale might not match up with towns.

Request to staff to do another panel. This discussion was very particular to issues in Casco Bay and we'll find very different issues in others areas of the coast.

Some things that were heard today:

- Some members of the panel had fear that we are here to bring in new bureaucratic regime – there is a lot of interest in not having a new regulatory structure, but we can look at regulatory inconsistencies and reconcile them. Ways to get rid of duplication or things that confound one another.
- A call for long range visioning and planning. We heard calls for educating the region, and for encouraging towns to work together. We heard examples of where it works and where it doesn't work. It might depend on their motivation.

- We should also consider how bay management could help in bringing scientific information to a region to help with decision making. If we find out some critical info about Casco Bay, how does that get incorporated into future decision making? Towns are so busy with work in front of them – is there a way to provide that info and a larger view.
- Lastly, is there a way to talk about cumulative impacts?
- If we come up with recommendations, it is important to think about what the carrot is and what the stick is. People don't like to be regulated, so what are the incentives – money, potential for authority, a hammer, etc.

Public Outreach Plans

Vanessa distributed the handout on the proposed public outreach process. She explained that staff was currently considering 3 distinct components of outreach:

1. At the first set of meetings we are aware that we missed certain stakeholder groups, that we would now try to target using different methods. For example, if it is a group that meets regularly, and they already have a meeting, we would try to use that. Or, we could try to set up focus groups.
2. We want to have a workshop with people who have ideas, either from Maine or people who are working on systems established elsewhere, to discuss specific tools and techniques.

Comments:

- Too many prongs going out from this effort? What if what is being shared is not consistent? Afraid that the effort becomes schizophrenic.
- Hesitate to go out for more open ended solicitation of ideas.
- It's important to get to people you missed, but they probably didn't come to the first meetings for a reason - like they didn't think it was in their interest. It would be more useful to seek specific feedback from a targeted group of stakeholders - more tangible, informative input.
- If we were to come forward with a strawman – that would engage commercial fishermen.
- It is worth asking whether it is a format problem – did people not come because they are not comfortable?

Vanessa suggested talking about the workshop. Staff hope to bring together individuals in Maine, as well as outside experts, to explore specific management tools and techniques.

Comments:

- It is important to go into such a workshop with a good understanding of documented needs. What are the unresolved conflicts- those that are not already subject to some mechanism? For example, is it fishermen v. fishermen, or impacts on environment? If the issue is a conflict over the use of space – that suggests one set of solutions to be discussed, but if it is water quality, it is a different set of solutions.
- It's true that whatever case studies are selected will need to be integrated. Examples that we have in mind include Cape Cod (cumulative impacts); Rhode Island (water use type);

Scotian shelf; and finally – other people in Maine who may already have an idea, if they could design it – what would it look like?

- In the end, there is no shortage of solutions – but what we don't know is what the problem is.
- The group today said that regulation on the water is covered. It may not be perfect or pretty, but it's covered. And conflicts between water based activities – such as fishermen and aquaculturists, is covered. The existing checks and balances work. Other than education, they don't want us to get involved. But the impact from external sources on the environment that we depend upon – that's not covered.
- Staff needs your help in identifying a way that you would be comfortable narrowing the focus of the project, or determining the problem you want to address.

Bay Management Study Workplan and Timeline

Staff was planning to end the information gathering phase of the committee's work by November.

Suggested plan: Have one or two more panels like today's, then come back together for a day to put parameters on what the problems are for which a solution is needed. Then, invite experts that are most tied to problems that need to be solved, and that are most relevant to Maine and have that be a full public meeting. Then get staff and steering committee together to come out with draft set of recommendations. Take that out to the public for a series of meetings up and down the coast.

- If another panel is done, do it Downeast, or at least east of Rockland.
- It might be worth having a meeting in Ellsworth area and focus it on getting some of those same public vocal people to explain what's missing, as well as some of the fishing interests. A panel that selected those people – EPBA, fishermen's association, town officials like harbor masters or local clam committees.
- May just come up with the same list Evan shared – is it worth testing that, rediscovering that with other issues and areas? Do we direct ourselves based on today or re-affirm that though another panel?
- We can get to the definition of a problem. We can ask 3-4 questions in each of these areas. Has there been a consistent id of a problem by stakeholders? Do we believe cumulative impacts are being anticipated and addressed? Does the scale of management match the scale of the problem? Are there emerging issues, technologies or trends that the responsible management parties appear to be unprepared for? If you can say yes to some of these questions, then you have a problem.
- It's useful to look at what legislature directed us to do.
- Staff put effort into summarizing public meetings. The group should talk about analysis of those.
- Go back to the working definition of bay management – send it out again to us – and see if it still sounds right to us. Do the things we learned from public meetings and what we learned today change this? Or can we resolve any of the unresolved questions?
- Look at public comments on what's working and not in terms of governance and see if we can come up with recommendations for that task.

- Remember that some segments are not well represented so far – fishermen, commercial uses, groups like EPBEA, “Friends of” groups – at least have not interacted with Steering Committee.
- Need both panels of people in specific bays, but also generally people representing the Maine public.

The date for the next meeting was set for November 9th.

Public Comments:

Joe Payne – Communication is a key tool to work out. A visioning process would underline what the problems are in an area. In today’s conversation, the discussion about regulations might have come out of my comment about comprehensive planning. As for getting a consistent set of problems, today’s conversation wasn’t set up to do that – ask the panel that if you want that info. Lastly, there’s something badly broken here. You might be trying too hard to find out exactly what the problem is. I appreciate Barbara going back to what the mandate is. Need to define what bay management is. I’m surprised that at this point in the process you’re not further along. If you took the group of people in the room and sat down, you guys could do this on your own. You know enough to define the problems. You know what the important problems are. What is preventing you from moving forward? I think you should have more progress by now. I think you are talented people. Certainly now, after the public meetings, you have good input.

Staff comments: Part of the problem in the past has been the perception of government doing things because they know best - so we’ve attempted to start at the grassroots and hear what all the issues are. This is partly why it’s been so slow – we’ve been slow and deliberate in asking for people’s ideas. Also, feel it is important to go slow because we will potentially be impacting lots of people, and we need to listen to what people have to say.